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Central Intelligence Agency

Washington, D.C. 20505

OLL 84-1432/1
18 April 1984

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your legislative referral memorandums of 10 April and 13 April 1984, wherein you request the views of the Central Intelligence Agency (CIA) on S. 905, as reported, and H.R. 3987, as ordered reported. Both of these bills are entitled the "National Archives and Records Administration Act of 1984" and both seek to establish an independent National Archives and Records Administration. The Central Intelligence Agency has no objections to S. 905 as reported by the Senate Committee on Governmental Affairs. H.R. 3987, however, contains a provision, not contained in S. 905, which we feel poses problems for the CIA, as explained below. We have crafted, therefore, language which we believe will resolve the problems posed by H.R. 3987 and, with the addition of our amendment, we would pose no further objection to H.R. 3987.

In reviewing this legislation to determine whether or not it could adversely impact on CIA, it is important to understand the legislative history of the Federal Records Act of 1950, which is amended by both of these bills. The Federal Records Act (64 Stat. 583) was enacted as a new Title V to the Federal Property and Administrative Services (FPAS) Act of 1949. This is critical because the FPAS Act contains a provision which states: "Nothing in this Act shall impair or affect any authority of...the Central Intelligence Agency;" (see 40 U.S.C.A. section 474). This provision applies, therefore, to the Federal Records Act, which is found in chapters 21, 25, 29, and 31 of Title 44, United States Code. S. 905 contains amendments to chapter 21 which the CIA would object to except for the fact that our concerns are taken care of by the above exception in the FPAS Act which will apply to these proposed amendments.

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H.R. 3987, however, also amends chapter 33 of Title 44, United States Code, which was not enacted as part of the Federal Records Act of 1950 and to which the CIA exception in the FPAS does not apply. Section 204 of the bill seeks to amend section 3301 of Title 44, United States Code, to add a new subsection (b). This subsection requires the Archivist to "establish detailed criteria under which material shall be examined to determine if it is a record..." and, furthermore, allows the Archivist to "...have access, to determine compliance..., to any material made or received by an agency of the United States Government." The CIA believes this provision could be construed to undermine the authority of the Director of Central Intelligence to protect intelligence sources and methods, contained in the National Security Act of 1947. In working to resolve this problem, we reviewed the current statutory provisions regarding inspection of records by the Administrator of General Services (GSA). Section 2906 of Title 44 currently allows the Administrator to inspect records for the sole purpose of making recommendations to improve an agency's records management practices and programs. This section also contains two important provisions which we believe should be added to the amendment proposed to section 3301.

The first is paragraph 2906(a)(2), which recognizes the sensitivity of records concerned with matters of national security and thus provides for inspection of such records "subject to the approval of the head of the agency concerned or of the President." The second important provision is subsection 2906(b), which requires the Administrator "...to comply with all other Federal laws and be subject to the sanctions provided therein" in conducting their inspections. H.R. 3987, as amended by your Committee, would extend these requirements regarding the inspection of records to the Archivist. We believe the addition of similar language to the proposed section 3301 in H.R. 3987 would resolve the concerns we have with the proposed section and allow a continuation of our good working relationship with the Archivist. The addition of this language to section 3301 would also provide an important element of uniformity in the inspection authorities of the Archivist as set forth in Title 44 of the United States Code. The amendments to section 3301 which we propose are as follows:

--Amend proposed subsection 3301(b) to read:

"(b) The Archivist of the United States shall, by regulation, establish detailed criteria under which material shall be examined to determine if it is a record as defined under subsection (a) and such regulation. The Archivist may have access, to determine compliance with such subsection and

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such regulations, to any material made or received by an agency of the United States Government. Access to such material, and the examination thereof, by the Archivist shall be in compliance with all other Federal laws and be subject to the sanctions provided therein."

--Add a new subsection (c) to read:

"(c) Material, the use of which is restricted by law or for reasons of national security or the public interest, shall be examined, in accordance with regulations promulgated by the Archivist, subject to the approval of the head of the agency concerned or of the President."

In compliance with your request, we are enclosing for clearance a views letter to Chairman Jack Brooks of the House Government Operations Committee which sets forth our proposed amendment. Please note that in writing this views letter we did not make mention of the continuing applicability of the CIA provision in the FPAS Act but, instead, focused solely on the problems we see in the Committee's proposed section 3301 and the need for consistency in setting forth the Archivist's inspection authorities throughout the chapters in Title 44, United States Code, which govern Federal records management.

We appreciate the opportunity to comment upon S. 905 and H.R. 3987. Given our concern as expressed above, we would appreciate being kept informed as to the development of an Administration position on this legislation.

Sincerely,

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Deputy Director, Office of Legislative Liaison

Enclosure

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Central Intelligence Agency

Washington, D.C. 20505

The Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Your Committee recently amended and approved H.R. 3987, the "National Archives and Records Administration Act of 1984". I understand that you hope to move this bill to the House floor as quickly as possible. In doing so, I hope that you will consider an amendment to the bill to resolve an apparent inconsistency between a proposed new subsection and current law.

The bill, as ordered reported, amends section 3301 of Title 44, United States Code, concerning the inspection of records by the Archivist of the United States. One of the amendments adds a new subsection (b), which requires the Archivist to "establish detailed criteria under which material shall be examined to determine if it is a record..." and, furthermore, allows the Archivist to "...have access, to determine compliance..., to any material made or received by an agency of the United States Government."

Current records management law, as set forth in section 2906 of Title 44, United States Code, provides for the inspection of agency records by the Administrator of General Services. In addition to the above amendment to section 3301, H.R. 3987 amends section 2906 to include inspection authority for the Archivist. However, proposed paragraph 2906(a)(2) retains the current requirement that inspections of records "...restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and the Archivist, subject to the approval of the head of the agency concerned or of the President." The paragraph also requires uniformity in the regulations promulgated by the Administration and Archivist to the extent possible. Furthermore, current subsection 2906(b) is retained, as amended, and requires the Administrator and the Archivist to conduct their inspections in compliance with, and subject to the sanctions of, all other Federal laws.

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These provisions in paragraph 2906(a)(2) and subsection 2906(b) have allowed the development of a good working relationship between the Administrator and the Central Intelligence Agency concerning the inspection of Agency records. Proposed subsection 3301(b), however, which also deals with the inspection of Agency records, albeit for a different purpose, does not include the requirements cited in section 2906. We believe that the inspection authorities of the Archivist, for whatever purpose, should be as uniform as possible throughout those chapters which govern Federal records management. Therefore, we would urge you to consider the following amendments to H.R. 3987:

--Amend proposed subsection 3301(b) to read:

"(b) The Archivist of the United States shall, by regulation, establish detailed criteria under which material shall be examined to determine if it is a record as defined under subsection (a) and such regulation. The Archivist may have access, to determine compliance with such subsection and such subsection and such regulations, to any material made or received by an agency of the United States Government. Access to such material, and the examination thereof, by the Archivist shall be in compliance with all other Federal laws and be subject to the sanctions provided therein."

--Add a new subsection (c) to read:

"(c) Material, the use of which is restricted by law or for reasons of national security or the public interest, shall be examined, in accordance with regulations promulgated by the Archivist, subject to the approval of the head of the agency concerned or of the President."

As you can see, these amendments add the current requirements contained in paragraph 2906(a)(2) and subsection 2906(b) which have facilitated the performance of records inspection responsibilities consistent with the national security.

I hope that you will give serious consideration to these amendments which we feel will aid the implementation of the Archivist's inspection authorities and facilitate agency compliance. The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Deputy Director, Office of Legislative Liaison

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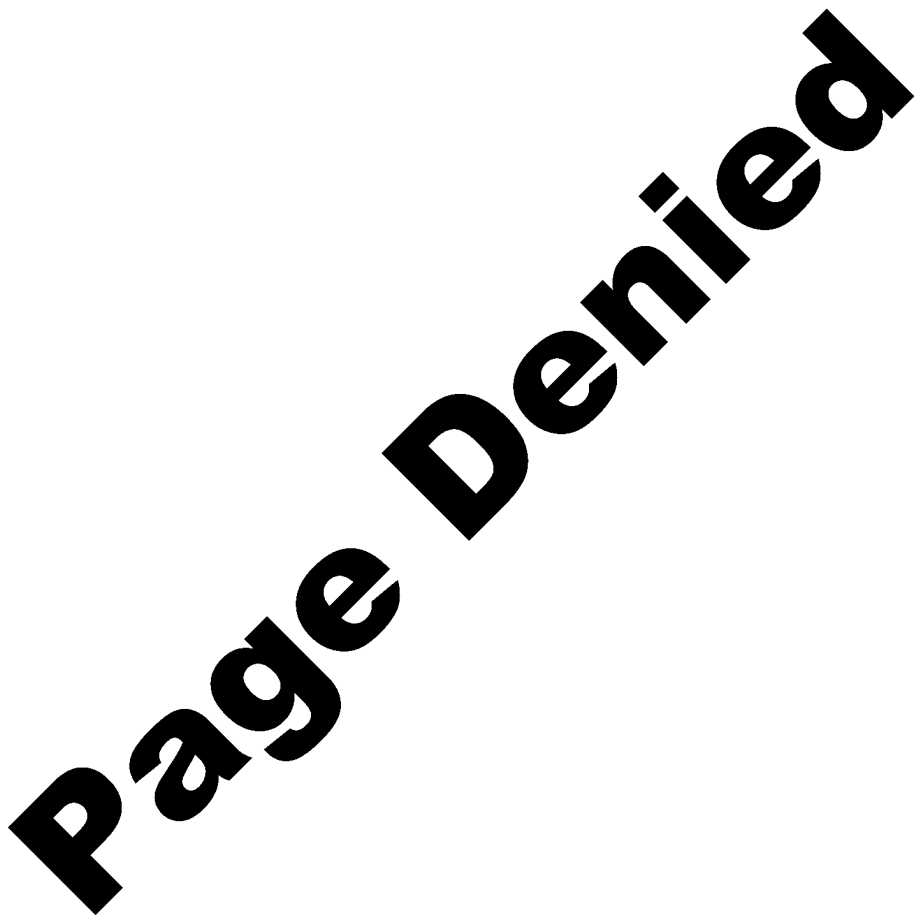

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